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**Western Massachusetts Child Welfare Cases:  
The Court-Appointed Counsel System in Crisis**

**EXECUTIVE SUMMARY**

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## EXECUTIVE SUMMARY

There is a critical shortage of attorneys available to handle the ever-increasing volume of child welfare cases in the juvenile courts of Massachusetts. This shortage has reached crisis proportions in the state's four western counties of Berkshire, Franklin, Hampden, and Hampshire, and is a growing source of delay in the resolution of care and protection and termination of parental rights cases.

In the vast majority of child welfare cases in Massachusetts, counsel is appointed to represent the children and indigent parents in court proceedings alleging the abuse and neglect of the children. For several years the numbers of attorneys who will accept court assignments for parents and children in these cases has declined. During that time court personnel in Berkshire, Franklin, Hampden and Hampshire counties reported serious difficulties in finding attorneys to assign to new cases.

In response, the Committee for Public Counsel Services (CPCS), the state agency responsible for training and certifying court appointed counsel, secured funding for an independent study of this problem. Using federally-sourced funds for the improvement of the child welfare system, CPCS contracted with The Spangenberg Group, a nationally recognized research and consulting firm located in West Newton, Massachusetts that specializes in the improvement of indigent defense systems. The purpose of the study was to (1) research factors that caused the shortage of attorneys and (2) develop recommendations for preventing similar problems in the future.

This report is the result of detailed interviews with participants in child welfare cases including private court-appointed attorneys, CPCS staff attorneys, DSS attorneys, judges, clerks, and mentors and regional coordinators for CPCS. During the study, court observation and data analysis were also performed.

This study revealed four major reasons for the inadequate number of court-appointed attorneys available to handle child welfare cases:

- The hourly rates of \$39 per hour for attorneys on care and protection cases and \$30 per hour for attorneys on CHINS (children in need of services) cases are wholly inadequate and unfair.
- Due to the nature of the work and the courts' case assignment procedures, attorneys are required to provide representation at the 72-hour hearing, a critical stage of the proceedings, with very short notice and often without consideration as to attorney availability.
- There is a growing dissatisfaction among attorneys in this practice area stemming from excessive, unproductive and uncompensated time spent waiting in court, CPCS billing restrictions and policies, and a perception that the attorneys and their work are under-appreciated and under-valued.

- Court inefficiencies result in protracted trials and hearings which delay case resolutions and prevent attorneys from being available to accept new assignments.

Low compensation is a primary factor contributing to declining interest in court-appointed work. Panel attorneys, DSS attorneys, judges and clerks all consistently reported that the \$39 hourly rate is a major factor and, to most, the number one factor in the problem of retaining attorneys on the panel. The legislature has not funded an increase in the rates of compensation since 1996. These rates fail to reflect the legal and social complexity of the cases and the degree of expertise required by attorneys. Further, the rates fail to reflect the importance of providing competent and effective legal representation in matters as critical as the possible permanent severance of a parent-child relationship.

CPCS policies also influence attorney morale and the attorney's sense of frustration. Attorneys complained of billing caps, continuing education training requirements and lack of support. CPCS restricts Children and Family Law attorneys to 75 open care and protection cases. Policies limit new cases to a total of 200 care and protection and CHINS case assignments a year. CPCS also limits annual billable hours to 1800 hours, daily billable hours to ten and compensable in-court waiting time to one hour per case and a total of three hours per day.

In-court waiting time is an enormous source of dissatisfaction for care and protection attorneys. A number of attorneys cited waiting time as one of the reasons for cutting back their care and protection practice. Attorneys also expressed a desire for staggered case scheduling in order to decrease waiting time.

Additional scheduling issues were mentioned as being sources of frustration for lawyers. These included: tardiness of judges taking the bench; last minute scheduling changes; judges holding meetings during court time and taking extended breaks without explanation; and an unwillingness or inability of the courts to schedule consecutive days for 72-hour hearings and trials. Inefficiencies and delays in scheduling also flow from the inherent difficulty in finding dates when all parties are available, given the number of attorneys involved in care and protection cases.

Inefficiencies also increase the need for more attorneys. When trials are not completed in consecutive days, cases stay open and attorney caseloads accumulate. As a result, attorneys with many relatively old, unresolved cases are less available to take new assignments.

## **Key Recommendations**

The report includes 23 recommendations for action to be taken by CPCS, juvenile courts, DSS and court-appointed attorneys in order to address the shortage of child welfare attorneys in western Massachusetts. The goal is to reverse the trend of attorney

attrition and to attract new attorneys to the practice. Success will require both independent and cooperative action by CPCS, the courts, and DSS. The following are some key recommendations:

**CPCS:**

- CPCS should continue to urge the Massachusetts legislature to fund an increase in the hourly rates to the CPCS approved levels of \$90 an hour for care and protection cases and \$60 an hour for CHINS cases.
- CPCS should increase its recruitment of attorneys for the Children and Family Law assigned counsel panel.
- CPCS should seek funding from the legislature to increase the number of public staff attorneys handling child welfare cases in the western counties.
- CPCS should review its billing and case-weighting policies.

**Juvenile courts:**

- The Juvenile Court administration should assist local courts in improving scheduling, docket control, and waiting time, and should provide increased support and oversight of local court management practices.
- Juvenile courts should use clerk magistrates to handle certain uncontested pre-trial matters.
- Juvenile court administrators should examine ways to increase the ability of the courts to schedule consecutive dates for 72-hour hearings, trials and other multi-day evidentiary hearings.
- Juvenile court judges should support the efforts of CPCS and the bar to increase compensation levels for assigned counsel.

**Joint action:**

- CPCS and the Juvenile Court should implement uniform practices for appointment of counsel that provide attorneys with sufficient time and information in advance of the 72-hour hearing so that attorneys may be better able to attend and prepare for the hearings.
- CPCS should work with bar members, DSS and judges to create a permanent Care and Protection Committee that will take a leadership role in addressing the systemic problems underlying the attorney shortage.